

FORMAL AGREEMENT BY AND BETWEEN  
FIRST NATIONAL BANK OF AMERICA  
EAST LANSING, MICHIGAN  
AND  
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY

The First National Bank of America, and the Comptroller of the Currency of the United States of America (Comptroller) wish to protect the interests of the depositors, other customers, and shareholders of the Bank, and, toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable laws, rules and regulations.

The Comptroller, through his National Bank Examiner, has examined the Bank, and his findings are contained in the Report of Examination, dated January 29, 2001(ROE).

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (Board), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Agreement.

**ARTICLE I**

- (1) This Agreement shall be construed to be a "written agreement entered into with the agency" within the meaning of 12 U.S.C. § 1818(b)(1).
- (2) This Agreement shall be construed to be a "written agreement between such depository institution and such agency" within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).
- (3) This Agreement shall be construed to be a "formal written agreement" within the meaning of 12 C.F.R. § 5.51(c)(6)(ii). See 12 U.S.C. § 1831i.
- (4) This Agreement shall be construed to be a "final order" within the meaning of 12 U.S.C. § 1818(u).
- (5) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded to:

Kenneth I. Myers  
Assistant Deputy Comptroller  
Detroit Field Office  
Omni Office Centre, Suite 411  
Southfield, Michigan 48034

## **ARTICLE II**

### **COMPLIANCE COMMITTEE**

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least three (3) directors. Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Agreement.

(2) The Compliance Committee shall meet at least monthly.

(3) By October 15, 2001 and quarterly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) actions taken to comply with each Article of this Agreement; and
- (b) the results of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller.

## **ARTICLE III**

### **BOARD'S COMMITTEE STRUCTURE**

(1) Within thirty (30) days after the appointment of the Compliance Committee, the Committee shall conduct a review of the Board's committee structure. The review shall include an evaluation of the existing structure and shall include:

- (a) an analysis of the number of committees and responsibilities assigned to each;

- (b) the composition of each committee with regard to the number of members and the technical expertise required for each member and the quality and quantity of management information; and
- (c) specific recommendations to improve the efficiency and responsiveness of each committee.

(2) Upon completion of the review, a copy of the written report shall be forwarded to the Assistant Deputy Comptroller along with a copy of the Board resolution making appropriate adjustments in the committee structure.

#### **ARTICLE IV**

#### **RISK MANAGEMENT**

(1) Within thirty (30) days, the Board shall identify and appoint an individual with demonstrated experience and skills in providing overall risk management to implement the Bank's risk management program. This individual shall report to the Board of Directors of the Bank. Prior to the appointment of an individual to this position, the Assistant Deputy Comptroller shall have the power of veto over the appointment of this person. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed individual. Once an individual has been identified to the Assistant Deputy Comptroller as the person to be appointed, any time taken by the Assistant Deputy Comptroller to determine whether to exercise the veto power shall not count against the thirty (30) day deadline.

(2) Within ninety (90) days of the appointment of the risk manager required by paragraph (1) of this article, the Board shall, in consultation with the bank's risk manager, develop, implement, and thereafter ensure Bank adherence to a written risk management program to include, at a minimum, the following:

- (a) identification of existing credit, liquidity, transaction and compliance risks, and a written analysis of those risks;

- (b) action plans and time frames to reduce risks where exposure is high, particularly with regard to credit risk, which impacts directly on liquidity and compliance risks, as more fully discussed in the Report of Examination;
- (c) policies, procedures or standards, which limit the degree of risk, the Board is willing to incur, consistent with the strategic plan and the Bank's financial condition. This includes analyzing and limiting the risks associated with any new lines of business that the Board undertakes. The procedures shall ensure that strategic direction and risk tolerances are effectively communicated and followed throughout the Bank and should describe the actions to be taken where noncompliance with risk policies is identified;
- (d) systems to measure and control risks within the Bank. Measurement systems should provide timely and accurate risk reports by customer, by department or division, and bank-wide as appropriate; and
- (e) procedures to ensure that Bank employees have the necessary skills to supervise effectively the current and the new business risks within the Bank, and procedures to describe the actions to be taken to address deficiencies in staff levels and skills.

The risk management program shall be consistent with the Bank Supervision Process booklet, EP-SUP, of the Comptroller's Handbook. Upon completion, a copy of the written risk management program shall be forwarded to the Assistant Deputy Comptroller for review.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

(4) The requirement to submit information and the prior veto provisions of this Article are based on the authority of 12 U.S.C. 1818(b) and do not require the Comptroller to complete his/her review and act on any such information or authority within ninety (90) days.

## **ARTICLE V**

### **MANAGEMENT FEES TO AFFILIATE**

(1) Prior to the payment of any management and other fees to any affiliate of the Bank as defined in 12 U.S.C. § 371c (Affiliate), the Board, or delegated committee of the Board, shall document and support, in writing, that such fees:

- (a) are reasonable;
- (b) have a direct relationship to, and are based solely upon, the fair value of goods and services received by the Bank; and
- (c) compensate the Affiliate only for providing goods and services that meet the legitimate needs of the Bank.

(2) All documentation supporting the payment of management and other fees to an Affiliate, shall be preserved in the Bank.

## **ARTICLE VI**

### **INTERNAL AUDIT**

(1) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to an independent, internal audit program designed to:

- (a) detect irregularities in the Bank's operations;
- (b) determine the Bank's level of compliance with all applicable laws, rules and regulations; and
- (c) evaluate the Bank's adherence to established policies and procedures, with particular emphasis directed to the Bank's adherence to its loan policies concerning underwriting standards and problem loan identification and classification.

(2) As part of this audit program, the Board shall establish an audit cycle sufficient to achieve the objectives stated above.

(3) The Board shall ensure that the audit department is adequately staffed, with respect to both the experience level and number of the individuals employed.

(4) The Board shall ensure that the audit program is independent. The persons responsible for implementing the internal audit program described above shall report directly to the Board or a committee thereof, that shall have the sole power to direct their activities. All reports prepared by the audit staff shall be filed directly with the Board or a committee thereof, and not through any intervening party.

(5) All audit reports shall be in writing. The Board shall maintain a written record describing any actions undertaken to address any deficiency.

(6) The audit staff shall have access to any records necessary for the proper conduct of its activities. National bank examiners shall have access to all reports and work papers of the audit staff and any other parties working on its behalf.

(7) Upon adoption, a copy of the internal audit program shall be submitted to the Assistant Deputy Comptroller for review.

## **ARTICLE VII**

### **THIRD PARTY LOAN REVIEW**

(1) Within sixty (60) days, the Board shall strengthen their oversight of the third party loan review process. In addition to a formal written report to be filed with the Board after each review, the process shall, at a minimum, include the following:

- (a) document in the Audit Committee minutes the engagement of the third party loan review firm and accompanying scope;
- (b) require the prior approval of the Board of Directors for any deviation from the scope of your third party loan review program;

- (c) require the scope, coverage and testing of loan review to be in compliance with the bank's own internal policies and procedures;
- (d) require a written agreement be executed between the bank and the third party loan review firm outlining the responsibilities of each party;
- (e) ensure that formal reporting includes a summary of loan quality and the identification and status of violations of law, rules or regulations; and
- (f) ensure the report includes loans not in conformance with the Bank's lending policy, and exceptions to the Bank's lending policy.

## **ARTICLE VIII**

### **CALL REPORTS**

(1) Within thirty (30) days, the Board shall adopt and cause the Bank to implement policies and procedures, in accordance with the Instructions for Preparation of Reports of Condition and Income, to ensure that all future official and regulatory reports filed by the Bank accurately reflect the Bank's condition as of the date that such reports are submitted.

## **ARTICLE IX**

### **LENDING POLICY**

(1) Within ninety (90) days, the Board shall review, revise, implement, and thereafter ensure Bank adherence to a written loan policy. In revising this policy, the Board shall refer to the Loan Portfolio Management Handbook, dated April 1998. This policy shall incorporate, but not necessarily be limited to, the following:

- (a) a description of acceptable types of loans;
- (b) a provision that current and satisfactory credit information will be obtained on each

- borrower;
  - (c) maximum ratio of loan value to appraised value or acquisition costs of collateral securing the loan;
  - (d) collection procedures, to include follow-up efforts, that are systematically and progressively stronger;
  - (e) a pricing policy that takes into consideration costs, general overhead, and probable loan losses, while providing for a reasonable margin of profit;
  - (f) a definition of the Bank's trade area;
  - (g) guidelines and limitations for loans originating outside of the Bank's trade area;
  - (h) a limitation on aggregate outstanding loans in relation to other balance sheet accounts;
  - (i) distribution of loans by category;
  - (j) guidelines for loans to insiders, including a statement that such loans will not be granted on terms more favorable than those offered to similar outside borrowers;
  - (k) guidelines and limitations on concentrations of credit;
  - (l) a limitation on the type and size of loans that may be made by loan officers without prior approval by the Board or a committee established by the Board for this purpose;
  - (m) guidelines for the placement of loans in a nonaccrual status; and
  - (n) guidelines for periodic review of the Bank's adherence to the revised lending policy.
- (2) Upon adoption, a copy of the policy shall be forwarded to the Assistant Deputy Comptroller for review.

## ARTICLE X

## **LOAN ADMINISTRATION**

(1) The Board shall, within ninety (90) days, develop, adopt, implement, and thereafter ensure Bank adherence to a written program to improve the Bank's loan administration. The program shall include, but is not be limited to:

- (a) procedures to ensure satisfactory and perfected collateral documentation;
- (b) procedures to ensure that extensions of credit are granted, by renewal or otherwise, to any borrower only after obtaining and analyzing current and satisfactory credit information;
- (c) documenting the specific reason or purpose for the extension of credit;
- (d) identifying the expected source of repayment in writing;
- (e) structuring the repayment terms to coincide with the expected source of repayment;
- (f) procedures to ensure the accuracy of internal management information systems;
- (g) procedures for the timely tracking and reporting of policy exceptions to the Board of Directors;
- (h) quarterly preparation of criticized action plans for all problem commercial borrowers with exposures greater than \$150M; and
- (i) training designed to ensure that management accurately risk rates loans in accordance with classification standards in Comptroller's Handbook, Section 215.

(2) Upon completion, a copy of the written loan administration program shall be forwarded to the Assistant Deputy Comptroller for review.

## **ARTICLE XI**

### **ALLOWANCE FOR LOAN AND LEASE LOSSES**

(1) The Board shall review the methodology of the Bank's Allowance for Loan and Lease Losses and shall establish a consistently applied, formally documented program, including written policies and

procedures, for determining Allowance adequacy. In reviewing your policy, the Board shall refer to the Allowance for Loan and Lease Losses Handbook, dated June 1996 and shall focus on:

- (a) results of the Bank's internal risk rating process;
- (b) results of the Bank's third party loan review;
- (c) an estimate of inherent loss exposure on each significant credit;
- (d) an estimate of inherent loss exposure on each problem credit;
- (e) loan loss experience;
- (f) trends of delinquent and nonaccrual loans;
- (g) concentrations of credit in the Bank;
- (h) present and prospective economic conditions; and
- (i) strengthening documented support for loss factors and unallocated reserves.

(2) The program shall provide for a review of the Allowance by the Board at least once each calendar quarter. Any deficiency in the Allowance shall be remedied in the quarter it is discovered, prior to the filing of the Report of Condition, by additional provisions from earnings. Written documentation shall be maintained indicating the factors considered and conclusions reached by the Board in determining the adequacy of the Allowance. Upon completion, a copy of the written allowance program shall be forwarded to the Assistant Deputy Comptroller for review.

## **ARTICLE XII**

### **APPRAISALS AND EVALUATIONS OF REAL PROPERTY**

(1) Within forty-five (45) days, the Board shall develop and implement a written real estate appraisal and evaluation program to ensure that the Bank's appraisal function complies with 12 C.F.R. § 34, Subpart C; the Interagency Appraisal and Evaluation Guidelines (October 1994); and the Uniform Standards of Professional Appraisal Practice. The program shall include, at a minimum, policies, procedures and controls to address the appraisal process weaknesses noted in the ROE at pages 6, 39, 62, 63, and 64.

- (2) A copy of this program shall be provided to the Assistant Deputy Comptroller for review.

### **ARTICLE XIII**

#### **OTHER REAL ESTATE OWNED**

(1) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a bank-wide policy to ensure that Other Real Estate Owned (OREO) is managed in accordance with 12 U.S.C. § 29 and 12 C.F.R. § 34. The policy shall address:

- (a) responsibility and authority for OREO properties;
- (b) proper accounting procedures for booking OREO properties upon transfer to bank ownership and upon sale to a third party;
- (c) procedures on "covered" OREO sales;
- (d) procedures to require timely appraisals pursuant to 12 C.F.R. § 34.85 and 12 C.F.R. Part 34, Subpart C;
- (e) diligent sales efforts; and
- (f) reporting systems.

(2) Upon adoption, the Bank shall forward a copy of the policy to the Assistant Deputy Comptroller for review.

### **ARTICLE XIV**

#### **LIQUIDITY**

(1) Within thirty (30) days, then semi-annually thereafter, Board shall ensure that liquidity stress test analyses are completed as part of the bank's contingency funding planning program. The program and testing should include:

- (a) projections of estimated balance sheet changes;
- (b) identification of liquidity sources and associated costs of acquisition; and

- (c) assigned responsibilities of personnel and actions to be taken in a crisis scenario.
- (2) Upon adoption, the Bank shall forward a copy of the test results to the Assistant Deputy Comptroller for review.

## **ARTICLE XV**

### **ASSET/LIABILITY POLICY**

(1) Within thirty (30) days, the Board shall adopt and include as part of their asset/liability management program full testing and reporting of all asset/liability limits defined in policy to the Board of Directors. In addition to the current guidelines now being tested, monitored and reported to the board of directors by management, the following should also be included as part of your monitoring and reporting process:

- (a) volume of uninsured deposits to total liabilities limitation;
- (b) deposit concentration (single source deposits) to total liabilities limitation;
- (c) 30 day funding limit for maturities limit (no more than 10% of total funding); and
- (d) FHLB borrowing capacity limitations,

(2) Upon adoption, the above limits should be included in your testing and reporting to the Board on your regular reporting schedule.

## **ARTICLE XVI**

### **VIOLATIONS OF LAW**

(1) The Bank shall immediately take all steps necessary to correct each violation of law, rule or regulation cited in the ROE.

(2) Within thirty (30) days, the Board shall adopt and implement specific procedures to prevent future violations as cited in the ROE; and shall adopt and implement general procedures addressing compliance

management that incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

(3) Upon adoption, a copy of these procedures shall be forwarded to the Assistant Deputy Comptroller.

## **ARTICLE XVII**

### **CLOSINGS**

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or approval, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Agreement shall continue in full force and effect unless or until such provisions are amended by mutual consent of the parties to the Agreement or excepted, waived, or terminated by the Comptroller.

(5) This Agreement is intended, and shall be construed to be a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C.

§ 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

Signed

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Kenneth I. Myers  
Assistant Deputy Comptroller

08/13/01

August 13, 2001

IN TESTIMONY WHEREOF, the undersigned, as duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

Signed

August 13, 2001

\_\_\_\_\_  
David R. Foote

\_\_\_\_\_  
Date

Signed

August 13, 2001

\_\_\_\_\_  
Frederick C. Foote

\_\_\_\_\_  
Date

Signed

August 13, 2001

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Kenneth J. Foote

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Date

Signed

August 13, 2001

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Steven M. Foote

\_\_\_\_\_  
Date

Signed

August 13, 2001

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Barbara F. Shingleton

\_\_\_\_\_  
Date

Signed

August 13, 2001

\_\_\_\_\_  
Cheryl F. Thomas

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Date